STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH EASTERDAY, a/k/a DEBORAH LAWNICZAK,

Plaintiff-Appellant,

v

CROSSINGS I,

Defendant-Appellee.

UNPUBLISHED
August 16, 2005

No. 253790
Kalamazoo Circuit Court
LC No. 03-000224-NO

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition. On February 15, 2001, plaintiff slipped and fell on accumulated ice on the parking lot of her apartment building, owned and operated by defendant. The trial court granted defendant's motion for summary disposition after finding that the condition was open and obvious and without special aspects so that it was not unreasonably dangerous. We affirm.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In reviewing de novo a decision on a motion for summary disposition based on the lack of a material factual dispute, an appellate court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted in the light most favorable to the party opposing the motion. MCR 2.116(C)(10), (G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition was appropriately granted if there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law. *Id.*

Plaintiff asserts that the trial court erred in granting defendant's motion for summary disposition because the snow-covered icy condition of defendant's parking lot was unavoidable and created an unreasonable danger. We disagree. It is true that, even if a condition is open and obvious, if special aspects of the condition make the risk unreasonably dangerous, the owner has a duty to undertake reasonable precautions to protect invitees from the risk. *Lugo v Ameritech Corp*, 464 Mich 512, 517; 629 NW2d 384 (2001). Such an unreasonable danger exists when special aspects of an open and obvious dangerous condition make it unavoidable or impose an unreasonably high risk of severe harm. *Id.* at 517-518. Our Michigan Supreme Court noted, "only those special aspects that give rise to a *uniquely* high likelihood of harm or severity of

harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Id.* at 519 (emphasis added). Where an individual could avoid an open and obvious slippery condition by simply taking an alternate route, no unreasonable risk of harm exists. *Joyce v Rubin*, 249 Mich App 231, 242-243; 642 NW2d 360 (2002).

In the present case, plaintiff has failed to show any special aspects of the open and obvious icy condition of defendant's parking lot that would require defendant to take further precautionary measures. While plaintiff maintains that she would have encountered the icy condition of the parking lot no matter what route she took to her trunk, her argument ignores the fact that she did not have to go to her *trunk* in order to go to work but could have proceeded directly to her driver's door and placed her bag in her vehicle's passenger compartment. Furthermore, plaintiff testified that she noted some slippery spots on the pavement and some spots that were "okay." Therefore, she has not established that she would have encountered the same slippery condition had she went directly to her driver's door, a shorter distance, rather than going around the car and coming toward the door from the trunk area by where she fell. In fact, plaintiff would not have encountered the specific icy patch on which she fell had she walked directly to her driver's door. Because an alternate route was available, no reasonable juror could find that special aspects made this condition an unreasonable risk of harm.

Furthermore, we agree with defendant that the condition of defendant's parking lot did not pose a *uniquely* high likelihood of harm where plaintiff concedes that an ice storm had hit the area that morning so that conditions in general were icy. Furthermore, plaintiff fell from a standing position to the ground, a fall from which, pursuant to our reasoning in *Corey v Davenport College*, 251 Mich App 1, 7-8; 649 NW2d 392 (2002), a typical person would not be expected to suffer severe injury. Therefore, given the common nature of icy conditions the morning plaintiff fell and her failure to show that the condition was unavoidable or posed a unique likelihood of harm or severe harm, the trial court properly concluded that there were no special aspects to the parking lot's condition that would remove the condition from the open and obvious doctrine. Accordingly, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens